

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re DANIELLE F., et al., Persons
Coming Under the Juvenile Court Law.

SAN MATEO COUNTY SOCIAL
SERVICES AGENCY,

Plaintiff and Respondent,

v.

JANE F.,

Defendant and Appellant.

A104806

(San Mateo County
Super. Ct. Nos. 70683, 70684, & 70685)

Jane F. appeals from orders denying her petition under Welfare and Institutions Code section 388¹ and terminating her parental rights. She contends the juvenile court erred by summarily denying the section 388 petition, and by failing to secure compliance with the notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C § 1901 et seq.). County counsel concedes the ICWA error, and asks us to remand for the limited purpose of ensuring that proper notice is provided. We shall do so.

The children, Rachel, Danielle, and Emily, were ages 12, 8, and 3 when the court terminated Jane's reunification services and visitation rights. Jane had failed to participate in the substance abuse counseling offered by the Department of Social

¹ Further statutory references are to the Welfare and Institutions Code.

Services and threatened to kill the children's foster parents. She was homeless. The children were afraid of her, refused to visit with her, and wanted to be adopted by their foster parents, who were willing to adopt. Jane's section 388 petition sought to reinstate services and visitation, based on her subsequent participation in substance abuse and mental health treatment. The court summarily denied the petition.²

Summary denial of a section 388 petition is proper if the petition fails to state a change of circumstances or new evidence that might require a change in a prior court order. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 461.) Belated participation in substance abuse counseling is insufficient to require an evidentiary hearing. (*Id.* at p. 463.) Jane argues she was presumptively entitled to custody. Not so. "After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. Rather, at this point, the focus shifts to the needs of the child for permanency and stability. In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child; such presumption obviously applies with even greater strength when the permanent plan is adoption rather than foster care. A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, what is in the best interest of the child." (*Id.* at p. 464, citations omitted.)

The court acted well within its discretion when it summarily denied Jane's section 388 petition.

DISPOSITION

The order denying the section 388 petition is affirmed. The order terminating parental rights is reversed, and the matter is remanded for the limited purpose of securing compliance with the notice requirements of the ICWA. If no tribe asserts its rights under

the Act, the court shall reinstate its order terminating parental rights. If a tribe does assert its rights, the court shall proceed according to the dictates of the ICWA.

Parrilli, J.

We concur:

Corrigan, Acting P. J.

Pollak, J.

² The court was open to allowing a visit between Jane and her children, but the children's counsel did not think they would want one, based on his "very recent conversations" with them.